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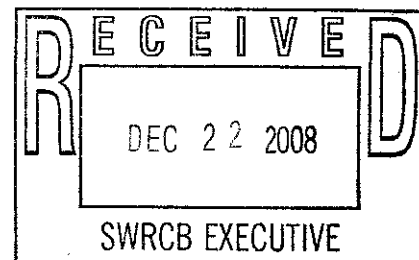
Public Comment
Recycled Water Policy
Deadline: 12/22/08 by 12 noon

IN REPLY REFER TO:
5090
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December 22, 2008

Ms. Jeanine Townsend
Clerk to the Board
Executive Office, State Water Resources Control Board (SWRCB)
P.O. Box 100
Sacramento, CA 95812-0100

Subject: Comment Letter – Proposed SWRCB Recycled Water Policy

Sent by Electronic and U.S. Mail



Dear Ms. Townsend:

On behalf of Rear Admiral Hering, the Department of Defense (DoD) Regional Environmental Coordinator for EPA Region IX, and the Military Services in California, I write to provide DoD's comments on the SWRCB's proposed approval of a Recycled Water Policy (Policy). At the outset we want to express our appreciation to the Board for undertaking a thoughtful initiative, complete with regulated stakeholder buy-in¹, that has the potential, if implemented with sufficient regulatory flexibility, to accomplish a great deal of good for water starved California.

DoD installations have long been leaders in water conservation, water recycling, and many military facilities are either implementing (or will soon implement) large-scale water recycling infrastructure projects that will significantly reduce potable water demand.² However, we would

¹ Given the importance of water policy to the DoD (one of the largest landowners in the State of California and an economic engine that supports entire regional economies), we respectfully ask the SWRCB to consider offering a DoD representative the opportunity to participate (in an ex officio capacity) in future stakeholder and technical advisory groups, where such groups are organized to review proposed SWRCB Policies.

² See Executive Order 13423 (requiring federal agencies to reduce approximately fifteen percent of 2007 potable water usage by 2015). As but one of many similar examples of extensive water reuse/recycling at DoD installations, Marine Corps Base, Camp Pendleton (Camp Pendleton) built a state of the art tertiary wastewater treatment plant in 2006 and thereafter installed 20 miles of reclaimed water lines that will bring the highly treated recycled water from the plant to areas where the water can be used for a variety of non-potable purposes. This project is anticipated to save over 1.2 million gallons a day of potable water over the short term and up to 2.75 million gallons a day over the long term. However, all of this extensive water reuse is contingent upon issuance of waste discharge requirements by the San Diego Regional Water Quality Control Board, and issuance of such WDRs is by no means assured (notwithstanding the significant expenditures on infrastructure that have already taken place).

be remiss if we did not also observe that a number of DoD installations continue to encounter difficulty in implementing large scale water reclamation/recycling projects because of what we perceive as inflexible application of basin plan standards (which were often set--in the absence of relevant data--over thirty years ago) for nutrients and total dissolved solids (TDS or Salts) by Regional Water Quality Control Boards (RWQCBs). We share the SWRCB's desire that the proposed Policy bring greater regulatory consistency and flexibility to permitting of recycled/reclaimed water projects while protecting existing beneficial uses. However, at this juncture, we are concerned that the Policy has the potential to create more uncertainty than it resolves. In that context, and in the hope of facilitating a Policy that truly can create greater opportunities for water recycling, we offer the following observations and recommendations to the Policy:

Add Definitions for Key Terms:

The Policy utilizes numerous terms of art throughout the document that, because they are currently undefined, create ambiguity and may lead to future disagreements over the meaning and intent of the Policy. Terms that staff should define (preferably in a newly added definition section), prior to finalization of the Policy, should include: 1) "recycled water"; 2) "municipal wastewater sources"; 3) "local water and wastewater entities"; 4) "local salt/nutrient contributing stakeholders"; 5) "stormwater"; 6) "conservation"; 7) "sustainable use"; 8) "nutrients"; 9) "salts"; 10) "basin or sub-basin"; 11) "landscape irrigation project"; 12) "emerging contaminant".

Legal Status of the Policy:

It is unclear whether the Policy represents a binding regulation applicable to all purveyors of recycled water or a "guidance" document premised upon the voluntary obligations undertaken by certain entities described (but undefined) as "local water and wastewater entities" and "local salt/nutrient contributing stakeholders."³ See Policy at ¶ 6.b(1)(a). Different portions of the Policy yield different impressions of the document's legal status. Paragraph 6 appears to create very specific regulatory timelines for development of Salt/Nutrient Management plans, that then must be adopted (in some form) by RWQCBs, while portions of the Policy such as ¶¶ 2-4 appear to be largely aspirational. SWRCB Staff should clarify the legal status of the Policy and identify which entities are subject to the binding regulatory provisions (if any) contained therein.

Regulatory Requirements Should not be "Moving Targets:"

As many other stakeholders have indicated, the best intentions to reclaim and recycle water will remain unrealized if regulatory requirements associated with start-up and implementation render such projects non-viable from an economic or operational perspective. In most cases it will not be practicable for military installations to undertake water reclamation

³ It is unclear whether DoD installations would be considered "local water and wastewater entities" or "local salt/nutrient contributing stakeholders" for purposes of the Policy--though the plain meaning of these terms could be interpreted to include DoD water recycling activities.

projects where monitoring and treatment requirements are applied to receiving waters rather than at the originating treatment plant. While military facilities can generally budget for particular plant improvements needed to accomplish future water reclamation, it may be far more difficult for these facilities to quickly adjust to new endpoints that arise as a result of stormwater or groundwater monitoring (or to newly created Salt/Nutrient Management Plans). In this regard, ¶ 6.b.(3) of the Policy is troubling in that it appears to contemplate comprehensive monitoring and reporting as a required component of every Salt/Nutrient Management Plan, with the implied intention of granting the RWQCBs the ability, after implementation of a water recycling project, to adjust permits for reclaimed/recycled water in a manner that makes the permits more stringent. While we have no quarrel with the Policy's prescribed elements (which must include—curiously—monitoring requirements for emerging contaminants, which typically are neither salts nor nutrients) for Salt/Nutrient Management plans per se, applying such plans and their mandatory elements retroactively (which the Policy does not rule out) may cause significant uncertainty and serve as a deterrent for future large scale infrastructure investment in water recycling.

Application of Policy to Stormwater:

The Policy is currently internally inconsistent in its discussion of stormwater. In ¶ 2.3, the Policy implies that stormwater reclamation will be governed by a separate policy that the SWRCB will develop at some future date. Yet, in paragraph 6.b.(1)(a), the Policy mandates that Salt/Nutrient Management plans include specific performance standards for stormwater recharge/reclaim even though such standards could very well be rendered irrelevant or unlawful by the Board's future development of a specific stormwater reclamation policy. Board Staff should reconcile this seeming inconsistency and clarify when and under what circumstances stormwater reclamation will be subject to this Policy.

Selection of an Appropriate Baseline Year for Determining Water Use Reductions:

Paragraph 1 of the Policy (Line 36) appears to incorporate the Governor's "20 by 2020" Initiative as a policy goal. While we support this goal, and are indeed doing our part to help California reach its goal of a 20% reduction in urban water use by 2020, we believe that the Policy establishes an incorrect baseline year for calculating reductions. From our contacts with other stakeholders, we understand that 2005 (or an average of water use over the last three years) would appear to be the consensus baseline for determining compliance with required future reductions. The Policy's suggested baseline year of 2007 may inappropriately result in the omission of numerous water conservation and recycling efforts implemented by DoD prior to 2007.

Water Rights in Recycled/Reclaimed Water Must Be Protected:

Paragraph 4.a.(3), Lines 106-07, should be modified to further clarify that it is not "waste" for purposes of the Water Code if water is not reclaimed because of concerns that such reclamation would cause injury to downstream riparians or others that may possess rights in treated wastewater return flows. See Water Code §§ 1211(a), 1702; *Order WR 2008-0024* (City of Riverside Change Petition WW-045).

Salt/Nutrient Management Plan Provisions Need Greater Specificity and Should Avoid Duplication with TMDL Development Process:

While DoD certainly appreciates the work completed by Board Staff on the Policy, we remain concerned that the proposed process for developing the Salt/Nutrient Management Plans lacks adequate specificity. First, the terms "basin" and "sub-basin" are undefined, so it is not clear which stakeholders must prepare these plans, the geographic boundaries the plans must cover, and which fellow stakeholders DoD installations must work with to develop the plans.⁴ Second, it is not clear who will pay for development of the plans and in what proportion. Third, plans developed under the Policy should be preceded by a use attainability analysis and an evaluation of whether the existing nutrient or salt water quality criteria are in fact needed to protect existing beneficial uses. Without such a preliminary analysis in watersheds that are currently listed as impaired for nutrients or salts, creation of Salt/Nutrient Management Plans may be an empty exercise. If existing standards are more stringent than natural background conditions or are applied in watersheds where the only "discharges" are composed entirely of pollutant loadings from "orphan" sources, there may simply be no assimilative capacity to accommodate new recycled water discharges even after implementation of a Salt/Nutrient Management Plan. If the SWRCB is serious about increasing water recycling opportunities, then the Regional Boards need to fund and provide technical assistance to stakeholder groups to complete evaluations of existing water quality objectives and the uses they support prior to undertaking preparation of the plans required in ¶ 6.

We also note that in impaired watersheds, where total maximum daily loads (TMDLs) will ultimately be prepared in accordance with Section 303(d) of the CWA, the process described for developing a Salt/Nutrient Management Plan may be duplicative with the TMDL development process (e.g., both processes would typically require source identification, estimation of loading and assimilative capacity, a fate and transport analysis, etc.). Board staff should clarify how the timing and requirements associated with development of the Salt/Nutrient Management Plans are to be reconciled with the TMDL development process in order to achieve maximum efficiencies.

Clarification is Needed on the Mechanism for Adopting Plans Subject to the Policy:

Staff should clarify the public process associated with RWQCB "adoption" of Salt/Nutrient Management Plans. Will RWQCBs revise the plans prior to incorporating them into the implementation sections of pertinent basin plans, or adopt them in essentially the same form as recommended by the stakeholders that prepare the plans? Will there be an opportunity for public notice and comment prior to adoption? The Policy should provide greater specificity on the process for Salt/Nutrient Management Plans becoming enforceable standards.

⁴ Again, it is unclear whether DoD installations are subject to the requirement to develop Salt/Nutrient management plans in accordance with ¶ 6 because the terms "local water and wastewater entities" and "local salt/nutrient contributing stakeholders" are not defined in the Policy.

Clarification of When Anti-Degradation Prohibition is Violated:

The Policy appears to recognize that there is often a fundamental tension between the commitment to encourage increased recycled water use and Resolution No. 68-16, California's Anti-Degradation Policy.⁵ Such tension is inevitable in many cases, with or without implementation of a Salt/Nutrient Management Plan, because water recycling projects generally lead to some increase in mass loading of salts or nutrients to ground or surface waters. The development of this Policy and the review of the SWRCB's Anti-Degradation policy should be closely coordinated to minimize the tension. Moreover, Board Staff should provide additional guidance in ¶6.b.(3)(f) of this Policy on how projects within a plan are to "collectively" demonstrate conformity with the Anti-Degradation Policy (e.g., how much addition of mass loading is okay before Resolution No. 68-16 is deemed violated?). Finally, to the extent that DoD installations fall outside the regulatory ambit of the Policy, we are concerned that DoD water recycling projects may be deemed to violate the Anti-Degradation Policy by mere virtue of their non-inclusion in the "collective" project list compiled by the funding stakeholders in accordance with the Policy.

Again, thank you for the opportunity to provide these comments. We look forward to further discussions with the Board and Staff regarding the concerns and recommendations raised herein. For further information, or to discuss the matters raised in this comment letter, my points of contact are Major Jeremy N. Jungreis, USMCR, (760) 725-2631 (jeremy.jungreis@usmc.mil), and Mr. Randal Friedman, (619) 572-5037 (randal.friedman@navy.mil).

Sincerely

Michael D. Huber For

C.L. STATHOS

By direction

⁵ We note that the State Board is currently reviewing the efficacy of its Anti-Degradation policy and the public comment period on this review recently closed. DoD submitted comments on the SWRCB's possible revisions to the Anti-Degradation Policy on December 16, 2008.